



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 27 2006

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Scriven-Young
McDermott Will & Emery LLP
227 West Monroe
Chicago, Illinois 60606-5096

Dear Mr. Scriven-Young:

Enclosed are an Administrative Consent Order (AOC) and a file stamped Consent Agreement and Final Order (CAFO) which resolves Kimble Glass Company (Kimble), CAA Docket No. CAA-05-2006-0034.

As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 28 2006.

Pursuant to paragraph 26 of the CAFO, Kimble must pay the civil penalty within 30 days of SEP 28 2006. Your check must display the case docket number, CAA-05-2006-0034, and the billing document number, 2750603A011.

Please direct any questions regarding this case to Sabrina Argentieri, Associate Regional Counsel, (312) 353-5485.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brent Marable".

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V

2006 SEP 28 AM 10:41

IN THE MATTER OF:) Docket No. CAA-05-2006-0034
)
Kimble Glass, Inc.) Proceeding to Assess an
1131 Arnold Street) Administrative Penalty
Chicago Heights, Illinois) under Section 113(d) of the
60411,) Clean Air Act,
) 42 U.S.C. § 7413(d)
)
Respondent.)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).
3. Respondent is Kimble Glass, Inc., (Kimble) a corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative

action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

40 C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Kimble admits the jurisdictional allegations in this CAFO and denies the factual allegations in this CAFO.

8. Kimble consents to the assessment of the civil penalty specified in this CAFO.

9. Kimble waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

10. 35 Ill. Admin. Code § 212.123 (Subpart B) requires that no person shall cause or allow the emissions of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission source.

11. Section 502 of the Act, 42 U.S.C. § 7661a(a), and

40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

12. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, or any rule promulgated, issued, or approved under Title V of the Act.

13. The U.S. EPA granted interim approval to Illinois' Clean Air Act Permit Program (CAAPP) with an effective date of March 7, 1995. See 40 C.F.R. Part 70, Appendix A. U.S. EPA granted final approval effective on November 30, 2001. See 40 C.F.R. Part 70, Appendix A.

14. The permittee must comply with all conditions of its Title V/Part 70 operating permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or for denial of a permit renewal application. 40 C.F.R. § 70.6(a)(6)(i).

15. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit,

are enforceable by the Administrator and citizens under the Act.

40 C.F.R. § 70.6(b).

16. The Administrator may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

Factual Allegations

17. Kimble owns and operates a container glass manufacturing facility at 1131 Arnold Street, Chicago Heights, Illinois 60411.

18. On April 16, 2001, the Illinois Environmental Protection Agency (IEPA) issued the CAAPP Permit (ID#031045AAJ) to Kimble. This permit covers several air emission sources, including the glass melting furnace B (Unit 05). The glass melting furnace B emissions are routed to a stack through an electrostatic precipitator (ESP).

19. Condition 5.2.2(b) of Kimble's Title V CAAPP Permit states that no person shall cause or allow the emissions of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere. See also 35 Ill. Admin. Code § 212.123.

20. The visible emissions from the facility's glass melting furnace B are subject to 35 Ill. Admin. Code Part 212.123 in the Illinois SIP and the Title V CAAPP Permit requirements.

21. On January 19, 2006, Paul Maly of IEPA and Daniel Schaufelberger and Manojkumar Patel of U.S. EPA conducted a Clean Air Act related compliance inspection at the Kimble facility.

22. Paul Maly of IEPA conducted EPA Method 9 visible emissions readings of the glass melting furnace B stack from 12:23 to 1:25 PM.

23. The 6-minute average visible emissions readings include opacity of 35%, 36%, 31%, 45%, and 31% which occurred between 12:48 PM and 1:24 PM.

Violations

24. Kimble's failure to maintain compliance with the 30% visible emission limit in its CAAPP Permit by emitting more than 30% visible emissions from the glass melting furnace B stack on January 19, 2006 is a violation of its CAAPP Permit, 502 of the Act, 40 C.F.R. § 70.7(b), and 35 Ill. Admin. Code § 212.123.

Civil Penalty

25. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and Kimble's good faith cooperation, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$16,000.

26. Kimble must pay the \$16,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

27. Kimble must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

28. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division

U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Sabrina Argentieri, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

29. This civil penalty is not deductible for federal tax purposes.

30. If Kimble does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C.

§ 3717. Kimble will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

Kimble will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of

the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

32. This CAFO resolves only Kimble's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

33. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect Kimble's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 32 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

35. Kimble certifies that it is complying fully with 35 Ill. Admin. Code § 212.123 and its Title V operating permit.

36. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Kimble's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

37. The terms of this CAFO bind Kimble, and its successors, and assigns.

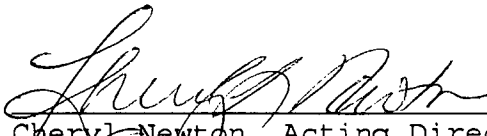
38. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorneys' fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

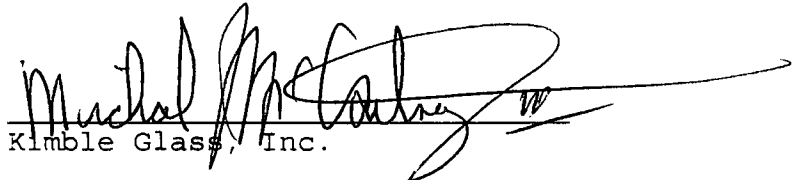
U.S. Environmental Protection Agency, Complainant

9/27/06
Date


Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Kimble Glass, Inc., Respondent

9/25/06
Date


Kimble Glass, Inc.

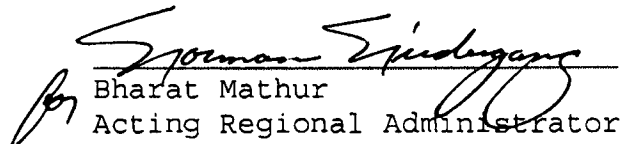
CAA-05-2006-0034

CONSENT AGREEMENT AND FINAL ORDER
Kimble Glass, Incorporated
Docket No. **CAA-05-2006-0034**

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9/27/06
Date


Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CONSENT AGREEMENT AND FINAL ORDER
Kimble Glass, Inc., Chicago Heights, Illinois
Docket No. **CAA-05-2006-0034**

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2006 SEP 28 AM 10:41

CERTIFICATE OF SERVICE


I, Betty Williams certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **CAA-05-2006-0034** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Kimble Glass's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

David Scriven-Young
McDermott Will & Emery LLP
227 West Monroe
Chicago, Illinois 60606-5096

I also certify that a copy of the CAFO was sent by first class mail to:

Julie K. Armitage, Acting Manager
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 28th day of September, 2006.


Betty Williams, Secretary
AECAS IL/IN

CERTIFIED MAIL RECEIPT NUMBER: 70010320000614550235